IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 198 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASANJI GOKULBHAI PATEL.

Versus

K M TRIVEDI,INQUIRY OFFICER

Appearance:

1. Special Civil Application No. 198 of 1993

MR TUSHAR MEHTA for Petitioner No. 1

MR BR SHAH for Respondent No. 1-2

MR LB DABHI AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/11/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition in order to quash and set aside the orders at Annexures-A, B, C and E respectively passed by the Inquiry Officer of the respondent Society, on the ground that the petitioner was not liable to pay the amount as was directed by the Inquiry Officer of the respondent Society.

2. While admitting the matter on 20/01/1993, this

Court had directed that the matter be heard along with Special Civil Application No.7113 of 1992. The said matter i.e. Special Civil Application No.7113 of 1992 was disposed of by this Court by judgment and order dated 16/08/2002. In para 21 of the said judgment, the Court had observed as under;

"Para 21. Therefore, in view of the same, the Court ordered for clarifying that it would not attach the disqualification under Rule 32 of the Gujarat Cooperative Societies Act. In the present case, for the reasons stated hereinabove, it is found that it was not a case of mistake of utilization of the fund, but it was rather a case of gross negligence in using the fund for a different purpose than the purpose of the society and no such prudent, elected representative or any person could have condoned the huge amount of Rs.1,45,000/-. It is also found that such conduct would attract the action under Section 93 of the Act and when the order under Section 93 of the Act is examined on merits and is found proper, merely because the amount is paid is no ground for removing the disqualification under Rule 32 of the Rules because, in my view, if such indulgence is shown it would frustrate the intention of the legislature to keep such persons out of the affairs of the society at the time of becoming members of the Managing Committee, more particularly when, on account of such persons, the society has not only suffered loss of funds, but the conduct was such that the persons should not be allowed to assume the office. Therefore, on the face of Rule 32 clause (f) and the intention of the legislature, I am of the view that the judgment passed in SCA No.4782/1991 is of no help to the petitioners and the said contention also fails."

3. In above view of the matter, the issue raised in this petition will also not survive. However, it will be open for the petitioner to challenge the final order, if any, before the appropriate forum. Hence, the petition stands disposed of accordingly. Rule is discharged. Liberty to apply afresh in case of difficulty.

(K. S. Jhaveri, J.)
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